HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Appeal No. 1056 of 2001
(OLD NO. 2989/1981)

Date of Decision : 7th June, 2006

A.F.R. (Approved for reporting)

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~~Not approved for reporting~~.

Initial of Judge.

Date 07/06/2006

Note: Bench Reader will attach this at the top of first of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1056 of 2001
(Old No. 2989 of 1981)

Bhuban Chandra
S/o Sri Bachi Ram
R/o Village Salaur Patti Gargari
P.O. Bhanargaon,
Tehsil and District – Nainital ….Appellant

Versus

Buddhi Ram
S/o Sri Paniram
R/o Village Salaur Patti Gargari
P.O. Bhanargaon
Tehsil and District – Nainital ….Respondent

Sri Nand Prasad, learned counsel for the appellant.
Sri H.S. Rawal, learned counsel for the respondent.

Hon'ble J.C.S. Rawat, J.

This is a Criminal Appeal against the order of acquittal dated 19.08.1980 passed by Sri P.K. Sharma, the then Munsif Magistrate, Nainital, in Criminal Case No. 107 of 1979, acquitting the accused-respondent u/s 500 I.P.C.

Brief facts of the disposal of this appeal are that an application was filed before S.D.M. u/s 107, 116 Cr.P.C. and in that application the respondent had written against the appellant that he was a man of bad character and he brings the girl and sell them out. On the basif of this averment, a complaint was filed u/s 500 I.P.C. The learned Magistrate after taking the cognizance recorded the evidence of the complainant-Bhuwan Chandra_pW1, Goving Ram-PW2 and Tara Ram-PW3. The complainant-PW1 himself had supported the averments of the complaint made by him before the court. Govind Ram-PW2 had stated that the complainant holds a very good character & reputation in the society but he had not stated directly or indirectly that the imputation directly or indirectly in his

estimation lowered the moral or intellectual character of the complainant. Tara Ram-PW3 had also stated that the complainant had a good character but he had not stated that the reputation of the complainant had been lowered down in the society by the said imputation

The accused-respondent examined u/s 313 Cr.P.C. and he had stated that he made the application and he admitted averment made in the application in para 5 of the application submitted to the S.D.M. He had stated that he had made the said imputation in good faith and public interest and he had no intention to defame the appellant. No defence evidence has been adduced in this case.

After appreciation of the evidence, the learned Magistrate held that the prosecution version must specifically establish the field in which the reputation of the appellant had been fallen or could fall in the eye of the reasonable man. The fields have been enumerated in Explanation 4 to Sec. 499 I.P.C. it was further held that the prosecution had failed to specify the ingredients of 499 I.P.C. as such, the accused-respondent was acquitted. Feeling aggrieved by the said order, the present appeal has been preferred.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellant contended that without examining the evidence the learned Magistrate had come to the conclusion that the imputation had not lowered down the appellant in estimation in the society. He had further contended that the evidence of the appellant as well as Govind Ram-PW2 and Tara Ram-PW3 who had stated that the appellant had a good moral character and the allegations made by the accused-respondent were false to the knowledge of the accused-respondent. It was further contended that the trial court had erred in holding that the prosecution has to specifically establish by the evidence that the imputation had lowered down the reputation of the appellant. The statement which was made by the respondent was grossly defamatory and he had proved

by the evidence that the said statement had lowered down the reputation of the appellant in the eyes of the law. Learned counsel for the respondent refuted the contention.

Before discussing the evidence, it would be just and proper to analyse the legal proposition in this regard. Section 499 I.P.C. reads as under:-

"499. Defamation. – *Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that persons.*

Explanation 1. – It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. – It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. - An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4. – No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of other, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or cause it to be believed that the body of that person is in a loathsome date, or in a state generally considered as disgraceful.

There is Explanation 4 to the Section 499 I.P.C. which makes an imputation defamatory only if it lowers a person in the estimation of others. It implies a fall in reputation. A person who stands not high in the estimation of others may not get a fall if the imputation be such as may not bring his reputation to a level below the one he

enjoys. Keeping in view the scope of Section 499 read with its explanation 4 and the extent of accused's liability for bringing his case within the ambit of this section, it is to be satisfied that the reputation has been lowered down in the estimation of the other person meaning thereby if a person knows about himself it is not a reputation. Reputation means what the other persons feel about the person who had been defamed. The interpretation of the said provisions came before the Hon'ble Allahabad High Court in **Ram Subhag Pandey & another Vs. State reported in 1971 A.L.J. p/1005.** The appellant who had been convicted by the learned Sessions Judge u/s 500 I.P.C. publishing a pamphle making allegations against the C.M.O., Kanpur taking to illegal gratification and other imputations which were defamatory. The complaint was filed before the learned Sessions Judge after obtaining the due sanction. In that case, appeal was preferred against the conviction before the Allahabad High Court. The witnesses who were produced in this case did not state in their evidence that the imputation directly or indirectly in their estimation lowered down the moral and intellectual character of the C.M.O. The prosecution produced the evidence of the witnesses but the evidence on this point was lacking in the statement. The Hon'ble Allahabad High Court set aside the conviction with a view that unless there is evidence about how the person reputation stood before the imputation was made and it was lowered down by a particular imputation, the accused cannot be convicted. The prosecution witnesses were found silent about the aspect of C.M.O. reputation which may have fallen by the disputed passages of the pamphlet. The Hon'ble Allahabad High Court further held that the prosecution had failed to prove by evidence that any of the exhibited passages was capable of lowering the reputation of the C.M.O. in the estimation of others. Therefore, the conviction was set aside.

In the instant case, the witnesses who had appeared before the court below had not stated that the reputation of the present appellant had been lowered down, as such, the findings recorded by the learned Magistrate vide his judgment and order dated 19.08.1980 in Criminal Case No. 107 of 1979, acquitting the accused-respondent u/s 500 I.P.C. are correct and I do not find any ground for interference in the findings recorded by the learned Magistrate. The appeal devoids of merit & is liable to be dismissed and the same is accordingly dismissed.

Let the record of the court below be sent to the trial court alongwith a copy of this judgment immediately

All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

7th June, 2006
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